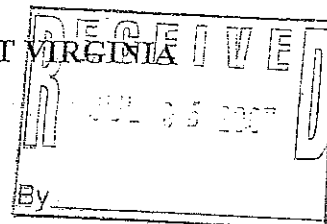


33868

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

JEANNE CARTWRIGHT, AS GUARDIAN AND
PARENT OF TIFFANY CARTWRIGHT,
A MINOR CHILD,



Plaintiff,

v.

CASE NO.: 03-C-0331

David Pancake, Judge

CARL F. MCCOMAS, M.D., and
CABELL HUNTINGTON HOSPITAL,

Defendant.

**ORDER GRANTING SUMMARY JUDGMENT
TO CABELL HUNTINGTON HOSPITAL, INC.**

On June 21, 2007, came the parties by counsel upon Defendant, Cabell Huntington Hospital, Inc.'s Motion For Summary Judgment. After due consideration of written and oral arguments by counsel, as well as the applicable law, this Court hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On October 29, 2002, this case was filed against Carl McComas, M.D., under the Medical Professional Liability Act 2002 ("MPLA II").
2. The Medical Professional Liability Act 2003 ("MPLA III") applies to all causes of action alleging medical professional liability which are filed on or after the first day of July, two thousand three. W.Va. Code §55-7B-1, et.seq.
3. On June 15, 2005, this case was filed against Cabell Huntington Hospital, Inc., under the MPLA III.
4. The Plaintiff disclosed four (4) expert witnesses as well as multiple treating physicians to offer opinions regarding standard of care and causation.

5. No witness or treating physician named by any party to this cause of action has opined that an employee of Cabell Huntington Hospital deviated from the acceptable standard of care causing harm to Tiffany Cartwright.

6. Plaintiff has offered no evidence that employees of Cabell Huntington Hospital were negligent in the care of Tiffany Cartwright.

7. Section §55-7B-9(g) of the MPLA III, states that a health care provider may not be held vicariously liable for the acts of a non-employee pursuant to a theory of ostensible agency unless the alleged agent does not maintain professional liability insurance covering the medical injury which is the subject of the action in the aggregate amount of at least one million dollars.

8. Carl McComas, M.D. is an employee of Tri-State Neuroscience Center and not an employee of Cabell Huntington Hospital.

9. Carl McComas maintained professional liability insurance covering the medical injury which is the subject of the Cartwright litigation in the aggregate amount of one million dollars. Therefore Cabell Huntington Hospital is not vicariously liable for the actions or omissions of Dr. McComas in this cause of action.

10. Plaintiff has not met her burden of proof that Cabell Huntington Hospital was negligent in this case.

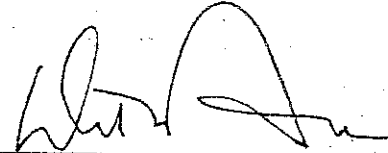
11. There is no genuine issue of material fact regarding the liability of Cabell Huntington Hospital in this cause of action

12. The MPLA III is clear, unambiguous and the Legislative intent is plain. Therefore, the statute is presumed to be constitutional.

WHEREFORE it is hereby ORDERED, ADJUDGED AND DECREED, that Defendant, Cabell Huntington Hospital, Inc.'s Motion For Summary Judgment is GRANTED and it is dismissed from the Civil Action.

The Court directs the Clerk to send a copy of this Order to counsel of record.

ENTERED this 2nd of July, 2007.



Honorable David M. Pancake

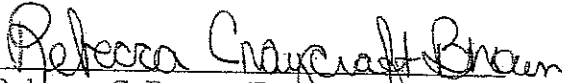
Judge, Cabell County Circuit Court

STATE OF WEST VIRGINIA
COUNTY OF CABELL
I, ADELL CHANDLER, CLERK OF THE CIRCUIT COURT FOR THE COUNTY AND STATE AFORESAID DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT ENTERED ON JUN 3 - 2007

GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS JUN 3 - 2007

 , CLERK
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

PREPARED FOR ENTRY BY:



Rebecca C. Brown, Esquire (WV 7321)

Thomas L. Craig, Esquire (WV 859)

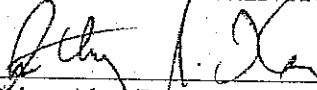
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APPROVED FOR ENTRY:



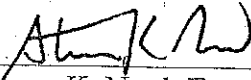
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IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

JEANNE CARTWRIGHT, AS GUARDIAN
AND PARENT OF TIFFANY CARTWRIGHT,
A MINOR CHILD,

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CARL F. MCCOMAS, M.D., and
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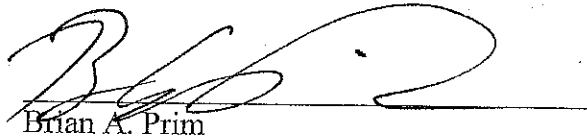
Defendants.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the DOCKETING STATEMENT was served
by United States Mail on the 2nd day of August, 2007 upon the following:

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